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No. -------

IN THE

Supreme Court of the United States

October Term, 1916.

No. 493.

P. L. CRANE,

Appellant,

vs.

HIRAM W. JOHNSON, Governor of the State of California, U. S. WEBB, Attorney General of the State of California, THOMAS LEE WOOLWINE, District Attorney of Los Angeles County, California,

Appellees.

BRIEF ON BEHALF OF APPELLEES.

Statement of the Case.

The appellant brought his bill of complaint in equity in the District Court of the United States for the Southern District of California seeking relief by injunction against the appellees from enforcing certain legislation enacted into law in the state of California.

The first act complained of appears in the bill of complaint (transcript of record, p. 4 et seq.): "An act to regulate the examination of applicants for license, and the practice of those licensed, to treat diseases, injuries, deformities, or other physical or mental conditions of human beings; to establish a board of medical examiners, to provide for their appointment and prescribe their powers and duties, and to repeal an act entitled, 'An act for the regulation of the practice of medicine and surgery, osteopathy, and other systems or modes of treating the sick or afflicted, in the state of California, and for the appointment of a board of medical examiners in the matter of said regulation,' approved March 14, 1907, and acts amendatory thereof, and also to repeal all other acts and parts of acts in conflict with this act."

The second act is also pleaded in full, the title being (transcript of records, p. 19 et seq.): "An act to amend an act entitled 'An act to regulate the examination of applicants for license, and the practice of those licensed, to treat diseases, injuries, deformities, or other physical or mental conditions of human beings; to establish a board of medical examiners, to provide for their appointment and prescribe their powers and duties, and to repeal an act entitled, "An act for the regulation of the practice of medicine and surgery, osteopathy, and other systems and modes of treating the sick and afflicted, in the state of California, and for the appointment of board of medical examiners in the matter of said regulation," approved March 14, 1907, and acts amendatory thereof,

and also to repeal all other acts and parts of acts in conflict with this act,' approved June 2, 1913, by amending sections two, three, four, five, eight, nine, ten, eleven, twelve, thirteen, fourteen, seventeen and eighteen, and adding a new section thereto to be numbered twelve and one-half, relating to the practice of chiropody." (Approved April 24, 1915. In effect Aug. 8, 1915.)

Appellant sought an interlocutory injunction against the appellees and a temporary restraining order pending the hearing and determination of the application for an interlocutory injunction.

The proceedings were had pursuant to the provisions of section 266 of the Judicial Code and before Honorable Erskine M. Ross, a Circuit Judge of the United States, and Honorable Oscar A. Trippet, and Honorable E. E. Cushman, District Judges of the United States. (Transcript of record, pp. 50, 51.)

The appellees first interposed an oral challenge to the jurisdiction of the court to entertain the bill. This was denied by the court upon the authority of

Raich vs. *Truax,* 219 Fed. 273, 283;
Truax and others vs. *Mike Raich* (Advance Sheets, Supreme Court, Nov. 1, 1915). (See transcript of record, p. 51.)

The court held that the granting of the order sought rested in the sound discretion of the court, and, upon the averments of the bill, that the application should be denied. (Transcript of record, p. 51, fol. 89.)

Moreover, the court declined to decide the merits of the case, whereupon appellant pursuant to the provisions of section 266 of the Judicial Code appealed to this court.

THE COURT PROPERLY DENIED THE RESTRAINING ORDER.

A court of equity has no jurisdiction to entertain the bill filed by complainant or to restrain defendant officers from instituting or prosecuting criminal proceedings in the state courts.

It is a fundamental and an elementary principle of equity jurisprudence that a party may not invoke the aid of a court of equity where he has an adequate remedy in a court of law.

This principle is declared in section 267 of the Judicial Code.

Does the bill in the case at bar make it appear that the complainant has not an adequate remedy at law? Nothing is alleged from which it is made to appear that complainant will suffer any great or irreparable injury while his rights are being determined in a court of law. If the statute is unconstitutional because discriminatory and otherwise in violation of the fourteenth amendment, a court of law will so declare.

The rule is general that equity has no jurisdiction to enjoin a prosecution for a criminal offense in a court of law.

1 Joyce Injunctions, Sec. 58–60*a*;
Ex parte Sawyer, 124 U. S. 200;
Fitts vs. *McGee,* 172 U. S. 516;

Bosley vs. *McLaughlin,* 236 U. S. 385;
Arbuckel vs. *Blackburn,* 113 Fed. 616;
Davis & Farnum Mfg. Co. vs. *City of Los Angeles,* 189 U. S. 207;
Davis & Farnum Mfg. Co. vs. *City of Los Angeles,* 115 Fed. 537;
Logan & Bryan vs. *Postal Telegraph Co.,* 157 Fed. 570;
Sullivan vs. *San Francisco Gas and Elec. Co.,* 148 Cal. 368;
Brown vs. *Mayor, etc. of Birmingham,* 140 Ala. 590;
City of Denver vs. *Beede,* 25 Colo. 172; 54 Pac. 624;
Crighton vs. *Dahmer,* 70 Miss. 602;
Wallack vs. *Society,* 67 N. Y. 23.

The principle for which we contend is well stated in *Little* vs. *Tacoma,* see 225 Fed. 202; also *Ex parte Sawyer,* 124 U. S. 200, in which the following language is used:

> "The modern decisions in England, by eminent equity judges, concur in holding that a court of chancery has no power to restrain criminal proceedings, unless they are instituted by a party to a suit already pending before it, and to try the same right that is in issue there. [Citing cases.]
>
> "Mr. Justice Story, in his Commentaries on Equity Jurisprudence, affirms the same doctrine. Story, Eq. Jur. No. 893. And in the American courts, so far as we are informed, it has been strictly and uniformly upheld, and has been applied alike whether the prosecutions or arrests sought to be restrained arose under statutes of the state or under municipal ordinances."

Ex parte Sawyer, supra, has never been overruled and is regarded as the leading case on the subject.

The opinion of the court in *Davis & Farnum Mfg. Co.* vs. *City of Los Angeles,* 115 Fed. 537, and the reasoning and authorities upon which Judge Wellborn bases his conclusion are that "a court of equity is without jurisdiction to enjoin criminal prosecutions under a statute or ordinance alleged to be unconstitutional and void, even though it is also alleged that it is the purpose of such prosecutions to injure complainant in his property rights, and that such will be their effect."

This decision was affirmed by the United States Supreme Court. (See 189 U. S. 207.) We do not contend, however, that the United States Supreme Court in later decisions has applied the rule against enjoining criminal prosecutions as strictly as it was applied in the above mentioned cases. (See *Dobbins* vs. *City of Los Angeles,* 195 U. S. 223). The cases in the Supreme Court of the United States are reviewed in *Logan & Bryan* vs. *Postal Telegraph Co.,* 157 Fed. 570, where it is shown that *Dobbins* vs. *City of Los Angeles, supra,* was an extreme case in its facts and exceptional in its holdings, by reason of the peculiar facts involved.

In

Sullivan vs. *San Francisco Gas, etc.,* 148 Cal. 371,

it is said:

> "Courts of equity will in proper cases enjoin the attempt to enforce a law or ordinance making

> certain acts a criminal offense and imposing a punishment therefor, where the law or ordinance is invalid and its enforcement will injure or destroy the plaintiff's property or property rights. * * * Some of the decisions even go so far as to hold that injunction will lie where the enforcement of the invalid law does not directly affect property or rights thereto, but operates upon the plaintiff's business, and thereby causes him material and irreparable loss. [Citing cases.] But upon this latter point there is a conflict, and the weight of authority and reason seems to be to the contrary." [Citing cases.]

Two interesting and exceedingly instructive cases dealing with this matter are *Brown* vs. *Mayor, etc., of Birmingham,* 140 Ala. 590, and *Denver* vs. *Beede,* 25 Colo. 172.

In *Brown* vs. *Mayor, supra,* it is pointed out:

> "No *right of property* is threatened by the proposed prosecutions directly or indirectly. Assuming (without at all considering the question) the invalidity of the ordinance, the utmost that will be involved in the prosecution and arrest of complainant under them will be no more than trespass to his person, and courts of equity are without power to enjoin threatened trespasses upon the person [citing cases], and this though such trespass would infringe upon his constitutional rights, life, liberty and pursuit of happiness." [Italics the courts.]

In *City of Denver* vs. *Beede, supra,* the court makes this exceedingly pertinent observation:

> "The fallacy of granting a writ of injunction in cases of this character on the facts detailed by appellee in his bill, is quite evident. If the question of the validity of the ordinance was before us, for determination, and we should decide in favor of its legality, yet notwithstanding appellee admits its violation, no judgment could be pronounced or directed against him therefor in this case, and hence the necessity of applying the rule strictly, that equity will not interfere with the prosecution of actions at law, except in cases where the applicant for such relief brings himself clearly within its purview. The object of ordinances, imposing penalties for specific acts, is to protect and preserve the peace and good order of the corporate community, as criminal proceedings are intended for the preservation of the peace and dignity of the state; and if every offender against such ordinances could invoke the interposition of a court of equity against their enforcement, by charging illegality, or by multiplying his offenses, municipal authorities would be paralyzed in discharging the public duties intrusted to them.
>
> "This is clearly an attempt to extend the writ of injunction beyond its scope and intent, and through this process, prevent the city from invoking the aid of competent tribunals to enforce this ordinance in the usual way, which, if permitted on the showing made, would be an abuse of that writ regarding which Chancellor Kent in *Attorney General* vs. *Utica Ins. Co.,* 2 Johns.

> Ch. 371, has aptly said: 'Nor ought the process of injunction to be applied but with the utmost caution. It is the strong arm of the court; and to render its operation benign and useful it must be exercised with great discretion and when necessity requires it.' "

As a practical matter the complainant has an adequate remedy at law. If he is convicted under a statute which he regards as unconstitutional, he may test the matter upon a writ of habeas corpus or by taking out a writ of error to the Supreme Court of the United States. (*Fitts* vs. *McGhee,* 172 U. S. 516.) But it is not alleged that any great or irreparable injury will accrue to him, nor will any such detriment accrue if this writ of injunction is denied. The only thing which in the ordinary course of events could result would be his arrest, providing he persisted in practicing his calling in defiance of the statute. His release upon bail would doubtless follow pending the determination of the legality of the law, which matter would be presented in his defense. It is not alleged that there is any intention of multiplying prosecutions pending the determination of the constitutionality of the law, but even were such fact alleged, it would not operate to lend equity to the bill.

> "The averment that repeated and numerous prosecutions are threatened is not a sesame to open the gates of equity and injunctive jurisdiction to the complainant; on the idea of preventing a multiplicity of suits. Repeated prosecutions will be consequent only upon repeated in-

fractions by the complainant of the ordinance, all of which he can, of course, forestall and avoid by simply desisting from the alleged criminal acts pending the first prosecution."

Brown vs. *Mayor, supra.*

See also,

Fitts vs. *McGhee,* 172 U. S. 516.

Moreover, there is little room for argument that the statute in question is unconstitutional. (See *Collins* vs. *Texas,* 223 U. S. 288; *Dent* vs. *W. Va.,* 129 U. S. 114.)

The act has recently been upheld by the Supreme Court of the state of California, in *People* vs. *Jordan* (Cal. Dec. Vol. 51, p. 435).

THIS COURT CAN NOT INQUIRE INTO THE CONSTITUTIONALITY OF THE ACT ON THIS APPEAL.

The only question before this court in this appeal is, did the trial court err in denying appellant's application for a temporary injunction herein. The merits of the case were not considered in the trial court and therefore can not be considered here. In support of this contention we cite *Ex parte Metropolitan Water Company,* 220 United States Reports, 539, where in a proceeding under section 266 of the Judicial Code, almost identical with the case at bar, it was held:

"While these considerations dispose of the case we briefly advert to an insistence made in argument that we should now take jurisdiction

of the merits of the case as made in the circuit court and determine whether or not the bill stated a case entitling to relief. Not being vested with original jurisdiction to pass upon the question of the validity of the Kansas statute and the petitioner being entitled as of right to have the controversy as to the constitutionality of the statute presented by its bill of complaint passed upon by a tribunal having such original jurisdiction, it follows that we do not possess a discretion to grant or refuse the writ, dependent upon our conception as to whether the Kansas statute is or is not constitutional."

CONSTITUTIONAL POWER SHOULD NOT BE USED TO ESTABLISH CRITERIA IN REGIONS OF GREAT DIVERGENCE OF OPINION.

This court in the case of *United States* vs. *Johnson*, 221 U. S. 488, 498, made the following pertinent comment on this point:

> "We shall say nothing as to the limits of constitutional power and but a word as to what Congress was likely to attempt. It was much more likely to regulate commerce in food and drugs with reference to plain matter of fact, so that food and drugs should be what they profess to be, when the kind was stated, than to distort the uses of constitutional power to establishing criteria in regions where opinions are far apart."

See also the case of

School of Magnetic Healing vs. *McAnnulty*, 187 U. S. 94.

The Act Is Constitutional and Does Not Discriminate.

At the threshold of his brief, counsel quotes at length from the decision of Mr. Justice James, of the District Court of Appeal of the state of California, Second Appellate District, and one might infer that the laws complained of had been held unconstitutional. (Appellant's brief, pp. 5 to 32.)

Such, however, is not the fact. The District Court of Appeal of the state of California, Second Appellate District, consists of one presiding justice and two associate justices. Mr. Justice Shaw, of the court, held the law constitutional, concurred in by Presiding Justice Conrey, a dissenting opinion which is incorporated in appellant's brief being written by Mr. Justice James. Thereupon the case *People* vs. *Jordan, supra,* was transferred to the Supreme Court of the state of California, where the act was held constitutional.

The decision of the Supreme Court, in bank, the opinion being by Mr. Justice Melvin, concurred in by the entire court, holds the laws constitutional. It is said:

> "Section 17 of the act provides: 'Any person who shall practice or attempt to practice, or who advertises or holds himself out as practicing, any system or mode of treating the sick or afflicted in this state, or who shall diagnose, treat, operate for, or prescribe for, any disease, injury, deformity, or other mental or physical condition of any person, without having at the time of so

doing a valid unrevoked certificate as provided in this act * * * shall be guilty of a misdemeanor.' Section 22 provides that the act shall not be 'construed so as to discriminate against any particular school of medicine or surgery, or any other treatment, nor to regulate, prohibit or to apply to, any kind of treatment by prayer, nor to interfere in any way with the practice of religion.' Appellant insists that the act violates certain constitutional provisions in that it is discriminatory in exempting from its provisions a certain class of drugless practitioners, namely: those who resort to prayer as a means of treating persons afflicted with bodily ills.

Clearly the purpose of the law is to protect both the individual and the public from the dangers and evils which might result from treatment by those not possessing the knowledge and skill requisite in the treatment of diseases with which mankind is afflicted. It is likewise clear that the degree of knowledge and skill, as well as the character thereof required, depends upon the treatment in the practice of which the practitioner engages. Thus, different qualifications are prescribed for those engaging in practice as physicians and surgeons (sec. 10 of the act) from those designated as drugless practitioners; the intention as to each class being that they shall qualify as possessing the knowledge and skill deemed necessary for the practice of the treatment in which the individuals of each class engage. The physician and surgeon is required to possess a knowledge of many subjects which it is not deemed necessary that the drugless practitioner shall possess. By reason of the different

treatment, there is a rational and intrinsic distinction which clearly justifies the classification. Coming to the exempted class of drugless healers, namely: those who treat by means of prayer here, too, there exists an obvious ground for the classification. The treatment practiced by many, though not all, of the drugless practitioners, is by manipulation of the bones and kneading of the muscles and tissues of the person treated. It is apparent that without a proper knowledge of the human body, its organs and functions thereof, or lack of skill, grave consequences to the patient might follow as a result of their treatment. Not so, however, as to one who in prayer invokes divine power to afford relief to one afflicted by disease. The possession of the prescribed knowledge and skill, without which the chiropractic, osteopath and neuropath is denied the right to practice his treatment, in no wise renders the prayers of one thus treating bodily ills more efficacious in the curing of disease; nor can it be said the prayer of an illiterate person may, in the consequences to the subject thereof, be more productive of harm or less beneficial than that of one possessing the learning and skill of an educated physician. To our minds, it is obvious that no reason exists for requiring the class engaged in treatment by prayer to possess the knowledge and skill required of others engaged in drugless treatment. The ground for the classification is as obvious as is the distinction between physicians and surgeons on the one hand, and drugless practitioners on the other, and as to each of which classes a different rule

applies. That the legislature has the right to establish such classification and exempt one class from the operation of a general law, where the same is founded upon some natural, intrinsic, or constitutional distinction, is too well settled to require citation of authority therefor; indeed, its constitutional right so to do is conceded by appellant. In *Ex parte King,* 157 Cal. 161, it is said: 'The question whether the individuals affected by a law do constitute such a class is primarily one for the legislative department of the state, and it is hardly necessary to cite authorities for the proposition that when such a legislative classification is attacked in the courts every presumption is in favor of the validity of the legislative act. Where upon the facts legitimately before a court, it is reasonable to assume that there were reasons, good and sufficient in themselves, actuating the legislature in creating the class, though such reasons may not clearly appear from a mere reading of the law, such assumption will be made, and the legislation upheld. To warrant a court in adjudging the act void on this ground, it must clearly appear that there was no reason sufficient to warrant the legislative department in finding a difference and making the discrimination.' In *Hellman* vs. *Shoulters,* 114 Cal. 147, the court, in discussing the question of the power of the legislature to classify, says: 'It has been uniformly held that a law is general which applies to all of a class—the classification being a proper one—and that the requirement of uniformity is satisfied if it applies to all the class alike. * * * The word 'uniform' in the constitution does not mean uni-

versal. The section intends simply that the effect of general laws shall be the same to and upon all persons who stand in the same relation to the law, that is, all the facts of whose cases are substantially the same.' In *Ex parte Bohannon,* 14 Cal. App. 321, the question before the court was as to the validity of an act entitled 'An act for the regulation of the practice of medicine and surgery, osteopathy, or other systems or means of treating the sick or afflicted in the state of California,' etc. (Stats. 1907, p. 252), which act concluded with the provision: 'Provided that nothing herein shall be held to apply or to regulate any kind of treatment by prayer.' It was there claimed, as here, that the exemption so made rendered the whole act unconstitutional and void by reason of giving immunities to those who treat physical ills by prayer. The court in its opinion said: 'If prayer can be regarded as practicing medicine and as an immunity, the act allows every person—man, woman or child—such immunity, and the right to pray for the sick and afflicted, and that is the only way that disease can be treated by prayer. Whether such treatment avails anything or not is not for us to say; but the privilege of practicing such treatment or such supplication is granted and allowed to all.' The scripture abounds with instances which, if accepted, tend to show that prayer in the treatment of disease was deemed efficacious and helpful. In the Epistle of James it is said: 'Is any sick among you? Let him call for the elders of the church; and let them pray over him, anointing him with oil in the name of the Lord.'

To assume that treatment by prayer is less efficacious or more dangerous or harmful to the subject of the prayer by reason of the fact that the supplicant has failed to devote 260 hours to manipulative and mechanical therapy, or has neglected to study elementary bacteriology for a period of 60 hours, does violence to all legal or religious teaching. It is clear that it was the legislative intent to omit from the operation of the statute that class of persons engaged in the healing of the sick by the instrumentality of prayer; and, to our minds, it is likewise clear that a natural, intrinsic and reasonable ground exists for making the exemption. Since this is true, it must follow that the act is not violative of those constitutional provisions (sec. 21, art I; subd. 19, sec. 25, art. IV; sec. 11, art. I) having for their purpose the uniform operation of general laws and inhibition against granting immunities to citizens which, *upon the same terms,* shall not be granted to all alike.

"We feel that there is little which we can profitably add to the discussion quoted above, but as it is argued that the act is discriminatory because the prohibitory words thereof make it unlawful for any one of those who fall within its description to 'diagnose' disease, we will further consider this contention. It is said that to 'diagnose' disease does not necessarily involve an intention on the part of the diagnostician either to treat the afflicted person or to prescribe for him in any way, and that to require no diagnosis from those who profess to treat disease by prayer while prohibiting all other unlicensed persons from diagnosing various ailments is an unjust

and unconstitutional regulation, favoring one class of citizens unduly. This whole argument rests upon a misconception of the meaning of the term 'diagnose.' As used in pathology the word means 'to determine the diagnosis of; to ascertain, as a disease from its symptoms.' (Century Dictionary.) The word 'diagnosis' is derived from the Greek prefix 'dia,' meaning 'between,' and 'gignoskein,' which signifies 'to know thoroughly' or 'to distinguish' or 'to discern.' Hence in its primary sense the word 'diagnosis' is used to designate a 'distinguishing between' things or a 'definition.' In pathology it means 'the recognition of a disease from its symptoms.' Some authorities add that the determination is based upon knowledge and experience. Diagnosis is as much a part of the practice of medicine as is the administration of remedies and it is a vastly more important branch thereof because, generally speaking, the treatment of disease is governed by the practitioner's theory regarding its cause. Intelligent treatment may only follow correct diagnosis. It is argued that diagnosis is merely 'guessing,' but that is only partially true. It is matter of common knowledge that in the present development of miscroscopy, chemistry, bacteriology, radiography and kindred sciences there are some diseases which may be detected with absolute certainty by the accomplished diagnostician. For example, it would be impossible for the educated medical man of today to be deceived into mistaking a case of diphtheria for some throat affection of a less virulent type for the reason that, with modern methods, the specific germ of diphtheria may be easily discovered

and recognized. But even where it depends partly upon conjecture, real diagnosis is the product of knowledge and experience. To diagnose a case is as much a part of the practice of medicine as the drawing of pleadings or the giving of advice are parts of the practice of law. No one would say that an attorney who devoted his efforts to the preparation of cases but did not personally present them in court was not practicing law. The Supreme Court of the United States has declared diagnosis to be a part of the practice of the healing art even in systems of treatment which do not deal with administration of remedies but with mechanical adjustment of parts of the human body. In *Collins* vs. *Texas,* 223 U. S. 288–296, Mr. Justice Holmes speaking for the court said: 'The plaintiff in error professes, as we understand it, to help certain ailments by scientific manipulation affecting the nerve centers. It is intelligible therefore that the state should require of him a scientific training. *Dent* vs. *West Virginia,* 129 U. S. 114; *Watson* vs. *Maryland,* 218 U. S. 173. He, like others, must begin by a diagnosis. It is no answer to say that in many instances the diagnosis is easy—that a man knows it when he has a cold or a toothache. For a general practice science is needed.' Viewed in the light of this language the objection which we have been discussing appears to have no weight. It is impossible to dissociate diagnosis from the practice of the art of healing by any physical, medical, mechanical, hygienic or surgical means. It is therefore competent for the legislature to permit only those persons who are proficient and

who have been found to be educated up to certain standards to 'diagnose' ailments.

"The objection that those who profess to treat bodily afflictions by prayer are not required to be proficient in diagnosis and that their exemption, under the law, is the extension of a favor to them which is withheld from others is met by the obvious answer that diagnosis is no part of such treatment. Those who believe that divine power may be invoked by prayer for the healing of the body believe also that God is all powerful. Patients receiving their ministrations know this and therefore no fraud or injury may be practiced upon such persons by reason of any lack of skill by the healers in determining the nature of the diseases to be treated. But those who elect to depend upon some other system of treatment have a right to protection by the state from the ministrations of unskillful, uneducated persons. For example, a sufferer from a fever who summons a licensed physician holding himself out to the public as one qualified to treat the sick, is entitled to the services of a doctor who has been taught to discriminate between typhoid and smallpox. In other words, the right to practice medicine should carry with it some assurance to the public that the licensed practitioner possesses reasonable proficiency in the technique of his profession."

In *People* vs. *Ratledge,* Volume 51, California Decisions, page 446, the same court says:

"All of the other questions of any moment which are raised on this appeal have been answered by the opinions in the case of *People*

vs. *Jordan* cited above, but because of the earnest insistence of counsel in all of these cases upon one point, perhaps further attention may with profit be given to it. The argument is made that because the law includes such subjects as histology, elementary chemistry, toxicology, physiology, elementary bacteriology and pathology in the examinations to be taken by applicants for certificates to practice as drugless healers, it is unfair, because these are standard courses of study in the preparation of physicians and surgeons but are not needed in the art of those who intend to alleviate human suffering by manual and mechanical means only. The answer is that to the legislature is committed the duty of determining the amount and quality of scientific education necessary for the individual to possess before he may hold himself out to practice the healing art. Unless the legislative conclusion upon that subject is obviously unfair we may not interfere, for the scope of the police power is very extensive and the discretion of the legislature in exercising such power is very broad. It is not for us to substitute our discretion and judgment for those of the legislature, although we may say in passing that the wisdom of some of the requirements for practice mentioned above would strongly appeal to us even if we did possess a broader power than is given to us. For example, the importance of a knowledge of toxicology will be evident to everyone. Without it the drugless practitioner might apply his manipulations to one suffering from the effects of a poison and might continue his efforts until time for the successful administration of an antidote

had passed. All that we have said in the Jordan case about diagnosis applies to this branch of the discussion. Many years ago this court, speaking through Mr. Chief Justice Wallace, announced the rule that in matters relating to public health the scientific correctness of the legislative body in imposing certain restrictions deemed to be for the public good is, generally speaking, not open to review. (*Johnson* vs. *Simonton,* 43 Cal. 242–249.) To be sure in that case there was a collateral attack upon a statute and not a direct one, but we cite the authority to illustrate the unwillingness of courts to interfere with legislative discretion exercised in the passage of laws pertaining to public health. In *Ex parte Lacey,* 108 Cal. 326–329, the rule of *Johnson* vs. *Simonton* was given application in a proceeding on habeas corpus involving a direct assault upon the constitutionality of a law designed for the promotion of public hygiene. The state has the right to specify and lay out a course of study and to establish a standard of efficiency. In *Ex parte Gerino,* 143 Cal. 412–417, this court sustained a provision of the medical law requiring that as one of the steps towards securing a certificate to practice medicine and surgery the applicant must produce a diploma issued by a medical college, the requirements of which should be equal to those prescribed by the Association of American Medical Colleges. In *Ex parte Whitley,* 144 Cal. 167–177, this court approved the Dental Practice Act, which prescribed among other things certain elementary educational qualifications in those seeking certificates to practice dentistry. It was held

that the necessity for education, its nature and its extent depend primarily upon the judgment of the legislature which may not be controlled by the courts, so long as it is reasonably exercised. And it is not necessary that to be within reason a required study must be one pertaining immediately to the branch of the healing art which an applicant for a license wishes to practice. For example, the algebra studied by a dental practitioner in his high school course may not bear directly upon his practice, but the study of mathematics is undoubtedly one of the means of culture by which his mind is better fitted to cope with professional problems and to acquire a mastery of stomatology sufficient for its practice by him without danger to the public. Further illustrations we think are not necessary to direct attention to the exercise of the power of legislative bodies in prescribing educational tests which must be met and passed by those seeking to secure licenses to practice medicine and other professions over which the state exercises control. Again let us call attention to the words of Mr. Justice Holmes quoted in the Jordan case: 'The plaintiff in error professes, as we understand it, to help certain ailments by scientific manipulation affecting the nerve centers. It is intelligible therefore that the state should require of him scientific training * * * For a general practice science is needed.' (*Collins* vs. *Texas,* 223 U. S. 288–296.) We conclude that there is nothing unreasonable in the curriculum prescribed by the Medical Practice Act for those wishing to secure licenses to practice the art of drugless healing."

And the above is reinforced by the somewhat expressive language of the Court of Appeal, in the First Appellate District, in the case of *Ex parte Bohannon,* 14 Cal. App. 322. In this case it was argued that the Medical Practice Act was unconstitutional and void because it discriminated in favor of persons healing by prayer, but the Court of Appeal disposed of this contention as follows:

> "Petitioner desires to have a writ of habeas corpus to obtain his release from imprisonment under a judgment rendered in a court of competent jurisdiction, convicting him of unlawfully practicing medicine without having a license or a valid unrevoked certificate authorizing him to practice medicine, contrary to the provisions of the law in such case made and provided.
>
> "The act under which the petitioner was convicted is entitled, 'An act for the regulation of the practice of medicine and surgery, osteopathy, or other system or means of treating the sick or afflicted in the state of California; for the appointment of a board of medical examiners in the matter of said regulation.' (Stats. 1907, p. 252; General Laws [1910, p. 609], Act 2163.) The act concludes with the following exception or proviso: 'Provided that nothing herein shall be held to apply or to regulate any kind of treatment by prayer.'
>
> "It is claimed that the latter exemption makes the whole act unconstitutional and void, and that it gives to a certain class of persons, to wit, those who treat physical ills by prayer, privileges and immunities which 'under like conditions are not granted to all citizens.'

"We do not so construe the section. If prayer can be regarded as practicing medicine and as an immunity, the act allows every person—man, woman or child—such immunity, and the right to pray for the sick and afflicted, and that is the only way that disease can be treated by prayer. Whether such treatment avails anything or not is not for us to say; but the privilege of practicing such treatment or such supplication is granted and allowed to all. A prayer is only a reverent petition to some divinity or object of worship. It has been said, 'More things are wrought by prayer than this world dreams of.' Those who believe in the teachings of holy writ attach great importance to the efficacy of prayer. Many examples of it are given in the New Testament. For instance, where Peter's wife's mother lay sick of a fever we are told that the Saviour 'touched her hand and the fever left her, and she arose and ministered unto them.' The proviso or exception was evidently put into the act to prevent any interference with the right of anyone to pray for the sick and afflicted.

"Writ denied."

Again we find the same litigant in court in 1914, the case being *Bohannon* vs. *Board of Medical Examiners,* 24 Cal. App. 215, and questions of the validity of the same law are reviewed at length in this case.

Upon an examination of the case just cited, it will be noted that the contention made by the appellant was that a certain classification in the law was unreasonable. In 1909, there was an amendment adopted to the Medical Practice Act of 1907, provid-

ing that the medical examining board might issue a certificate to any person who had practiced a special branch of medicine and surgery for a period not less than thirty-five years; fifteen years of which time must have been spent in California.

The contention pressed in the briefs and argument of counsel was that the right to receive a diploma was not based upon a test of ability, but flowed from the commission of a number of misdemeanors. The court, expressing its opinion through Mr. Justice Kerrigan, started with the premise that the law must be upheld unless clearly violative of the constitution.

The court very thoroughly, and with careful and extended labor, reviewed many of the decisions of this state upon reasonable and unreasonable qualities in discriminatory legislation. The opinion is enlightening upon this general subject.

The court sustained the law as constitutional and made an appropriate order in the premises.

THE ACT DOES NOT CREATE A MONOPOLY IN FAVOR OF THOSE WHO HEAL BY CHRISTIAN SCIENCE.

No monopoly is created in favor of those who heal through the ministrations of Christian Science, as the act expressly states that:

> "Nor shall this act be construed so as to discriminate against any particular school of medicine or surgery, or any other treatment, nor to regulate, prohibit or to apply to, any kind of treatment by prayer, nor to interfere in any way with the practice of religion."
>
> (Transcript of record, page 18.)

Thus it will be readily seen that the exemption includes all persons who heal by "treatment by prayer" or in the course of "the practice of a religion." This point is definitely covered in the case of *Ex parte Bohannon,* 14 Cal. App. 322, wherein it was said:

> "If prayer can be regarded as practicing medicine and as an immunity, the act allows every person—man, woman, or child—such immunity, and the right to pray for the sick and afflicted, and that is the only way that diseases can be treated by prayer."

We might add that those who employ prayer in the healing art or heal as a part of a religious practice would be exempt from a medical practice act, without such exemption appearing in the act. The Supreme Court of the state of Kansas has the following to say on this subject:

> "The express exclusion of religious belief in the application of the law was hardly necessary. Religious freedom is guaranteed by the constitution, and without mention in the statute would have been implied."
>
> *State of Kansas* vs. *Wilcox,* 64 Kansas, 789.

The legislatures of seventeen states of the Union have incorporated in the medical practice acts of their states an exemption in favor of those who heal by prayer or in the course of the practice of a religion, and ex-President Taft, by a special amendment to his executive order of October 14, 1914, for the Panama Canal Zone, adopted for the purpose,

exempted such treatment of the sick in the following language:

> "Nothing in this order shall be construed to prohibit the practice of the religious tenets of any church in the ministering to the sick or suffering by mental or spiritual means without the use of any drug or material remedy, whether gratuitously or for compensation, provided sanitary laws are complied with."

For the convenience of the court we have added as Appendix "A" hereto the clauses of the medical practice acts of the various states providing for the exemption of those who employ prayer only in their treatment and those who heal in the course of the practice of a religion. Such acts have been held constitutional in other states than California, as is more fully set out hereinafter.

Other religious denominations than Christian Science have provisions in their creeds, prayer books or manuals providing for the healing of the sick or the treatment of the sick by prayer, and of course those of such denominations are likewise exempted from the operation of this act.

"The Pilgrims Pastor's Manual" of the Congregational faith, at page 73 thereof, in chapter entitled, "Brief Selections of Scripture for the Sickroom," provides as follows:

> "Blessed is he that supporteth the poor; The Lord will deliver him in the day of evil.

"The Lord will preserve him, and keep him alive, and he shall be blessed upon the earth;

* * *

"The Lord will support him upon the couch of languishing."

"The Government, Discipline and Worship of the Presbyterian Church, in the United States of America" (1909) at page 107, in chapter entitled, "Of the Visitation of the Sick" has the following to say:

"At a proper time when he is most composed the minister shall pray with and for him."

"The Book of Common Prayer, according to the use of the Protestant Episcopal Church in the United States of America," at page 282, in chapter entitled, "The Order for the Visitation of the Sick," contains the following:

"Hear us, Almighty and most merciful God and Saviour; extend Thy accustomed goodness to this Thy servant, who is grieved with sickness; sanctify, we beseech Thee, this thy Fatherly correction to him; that the sense of his weakness may add strength to his faith, and seriousness to his repentance; that if it shall be thy good pleasure to restore him to his former health, he may lead the residue of his life in Thy fear and to Thy glory;"

The "Methodist Discipline" (1908), edited by Bishop Daniel A. Goodsel, Joseph B. Hingeley, and

James N. Buckley, in chapter entitled, "Consecration and Ordination," contains the following:

> "Then shall the bishop deliver to him the Bible saying: * * * Be to the flock of Christ a shepherd, not a wolf; feed them, devour them not. Hold up the weak, heal the sick, bind up the broken, bring again the outcast, seek the lost; be so merciful that you may not be too remiss; * * *"

The appellant's contention that a monopoly is conferred upon the Christian Scientists by the act may be as a result of the success which seems to be attending the practice of Christian Science in the healing field, but it is not for us to say that the prayers of those of the other religious denominations do not bear fruit.

Healing by prayer or as a part of the practice of a religion has ample justification in the Scripture, and we have attached hereto as Appendix "B" a collection of incidents taken from the Scriptures establishing the fact that such healing was brought about through such ministrations in Bible times.

Distinctions Recognized by the Courts Between Healing by Spiritual Means or Prayer and Other Means.

The Supreme Court of the state of Washington in a recent decision, has distinguished between "healing by prayer" and "suggestive therapeutics" or healing

by the use of mental suggestion. The Washington medical practice act provides:

> "Nor shall this chapter be construed to discriminate against any particular school of medicine, of surgery, or osteopathy or any system or mode of treating the sick or afflicted, or to interfere in any way with the practice of religion; provided that nothing herein shall be held to apply to or to regulate any kind of treatment by prayer."

In the case of *State of Washington* vs. *T. F. Pratt,* Volume 38, Washington Decisions (advance sheet) page 83, the Supreme Court had this to say:

> "Suggestive therapeutics, as shown by the record before us, is not the practice of any religious belief, nor is it 'any kind of treatment by prayer.' As practiced by the appellant, it consists of a laying on of hands upon that part of the body where the trouble is and, quoting from appellant's testimony, 'upon certain parts of the spine that controls this—these nerves, or the nerves that control the organ; and I give certain suggestions which goes from my mind to the mind of the patient, and the mind of the patient controls his own body. That is the way the cure is performed.' The claim is also made that, by this laying on of hands, certain 'vibrations' are sent through the body, that are instrumental in effecting the cure. That the mind exercises a powerful and ofttimes controlling influence upon the body can not be denied, and we are offering no criticism upon appellant's methods. We are

only concerned with the fact that it is a mode of treating the sick, and as such can be practiced only after obtaining the proper certificate from the state medical board."

The Supreme Court of the state of Illinois has distinguished between healing by spiritual means and magnetic healing in the case of *People* vs. *Gordon,* 144 Ill. 560. It appears that the defendant Gordon, who had been prosecuted for practicing medicine without a license, held himself out to be a "magnetic healer." He had an office in an office building, and on the door thereof appeared the inscription "Dr. Gordon, Healer," or "Magnetic Healer." It further appeared that he consulted with patients as to their ailments and treated them and that his treatment consisted of massaging and rubbing, using no drugs, medicines or material remedies and prescribing no diet; that the treatment, according to defendant's testimony, was a magnetic treatment or mental science and mental suggestion was employed. On this statement of fact he attempted to avail himself of the exemption in the Illinois Medical Practice Act, which provides as follows:

> "And this act shall not apply to * * * any person who ministers to or treats the sick or suffering by mental or spiritual means, without the use of any drug or material remedy."
>
> Hurd Rev. Stats. 1909, Ch. 91, sec. 11 (p. 1474).
>
> Also Laws (1889) p. 275, sec. 7.

The court held:

> "We are unable to see how, under his own evidence, this position can be maintained. It is true he does not use 'drugs or other material remedy;' neither does he treat the 'sick or suffering by mental or spiritual means,' and therefore whether the word 'material' is to be construed as meaning other treatment similar to the use of drugs is wholly immaterial. Very clearly this provision means that those who pretend to relieve the ailments of others by mere mental or spiritual means shall not be considered within the act; but if the defendant, under the proof in this case can bring himself within that exception, then every one who treats diseases without administering medicine, either externally or internally, can also be brought within the exception. Few, perhaps, if any, physicians attempt to treat the sick and suffering without appealing to the mental faculties, to a greater or less degree, in aid of the remedies they apply or prescribe; but that is not treating the sick by mental or spiritual means."

It will be seen from the decisions above quoted that it is not proper to class Christian Scientists or those who heal the sick by prayer or in the practice of a religion, as "drugless healers," notwithstanding the fact that they do not employ drugs. It should be obvious therefore that those who heal the sick by any means other than "treatment by prayer," or in the "practice of a religion" and those who employ such last mentioned means belong to different classes, based upon sound and reasonable distinctions.

THIS COURT CAN TAKE JUDICIAL NOTICE OF THE FACT THAT THE HEALING OF THE SICK IS A PART OF THE RELIGIOUS PRACTICE OF THE CHRISTIAN SCIENCE CHURCH.

The growth and activity of the Christian Science Church has reached such proportions that the fact that the healing of the sick is a part of the practice of the religion of that church is well known and this court can take judicial notice of this fact. For the convenience of the court we have attached hereto as Appendix "C" the tenets of the Christian Science Church, as set forth on page 15 of "Church Manual of The First Church of Christ, Scientist, in Boston, Massachusetts."

In the case of *Glover* vs. *Baker,* 76 New Hampshire, 393, 416, the court says:

> "If necessary, no reason occurs why the 'tenets' of Christian Science may not be as readily passed upon as the creed of Congregationalism or the faith of Unitarianism."

In the case of *Hilton* vs. *Roylance,* 25 Utah, 129, appears the following:

> "Courts will take notice of matters of history, of the contents of the Bible, of the fact that there are religious sects, of the creed and general doctrines of each sect."

And in California, it has been repeatedly held that the rule set forth above is sound. The Supreme Court of that state has said:

"The court will refer to such books as it finds most informing."

Rogers vs. *Cady,* 104 Cal. 288.

Also see

People vs. *Mayes,* 113 Cal. 618.

TREATMENT BY PRAYER OR IN THE COURSE OF THE PRACTICE OF A RELIGION DOES NOT CONSTITUTE THE PRACTICE OF MEDICINE.

Treatment by prayer or the healing of the sick in the course of the practice of a religion has been repeatedly held not to come within the meaning of the term "the practice of medicine." In the case of *State* vs. *Mylod,* 20 Rhode Island, 632, the court held:

"Prayer for those suffering from disease, or words of encouragement, or the teaching that disease will disappear and physical perfection be attained as a result of prayer, or that humanity will be brought into harmony with God by right thinking and a fixed determination to look upon the bright side of life does not constitute the practice of medicine in the popular sense."

Also see *Kansas City* vs. *Baird,* 92 Mo. App. 204, and *State* vs. *Smith,* 233 Mo. 242, at 261–2.

CONSIDERATION OF CASES CITED IN APPELLANT'S BRIEF.

The only citation presented by the appellant's brief which in any wise supports his contention is the minority opinion of Justice James of the District Court of Appeal, in the case of *People* vs. *Jordan,* when that case was before the District Court. As

pointed out above, the Jordan case was transferred to the Supreme Court of the State of California because the three justices could not agree on the decision, and the decision of the Supreme Court in this case completely answers every phase of the minority opinion of Judge James.

People vs. *Jordan, supra.*

The other cases cited by appellant are of no assistance to him in this controversy, but might be, if at all, when presented in defense of a criminal prosecution for a violation of the act in question.

MEDICAL LEGISLATION IS SALUTARY AND CERTAIN DISCRIMINATIONS ARE NECESSARY.

Few professions require more careful preparation by one who seeks to enter it than that of medicine. The power of the state to provide for the general welfare of its people authorizes it to prescribe such regulations as are necessary for the public welfare, and necessary to insure the people of the state against the consequences of ignorance and incapacity.

Dent vs. *West Virginia,* 129 U. S. 114.
Watson vs. *Maryland,* 218 U. S. 173.

In the last case a statute of the state of Maryland, containing provisions regulating the practice of medicine, provided an exemption in favor of persons practicing before January, 1898, and who were practicing when the law became effective. Other ex-

ceptions were also made. The section making certain of the exemptions reads:

> "* * * but nothing herein contained shall be construed to apply to gratuitous services, nor to any resident or assistant resident physician or students at hospitals in the discharge of their hospital or dispensary duties, or in the office of physicians, or to any physician or surgeon from another state, territory, or district in which he resides when in actual consultation with a legal practitioner of this state or to commissioned surgeons of the United States Army or Navy or Marine Hospital Service, or to chiropodists, or to midwives, or to masseurs or other manual manipulators, who use no other means; nor shall the provisions of this subtitle apply to physicians or surgeons residing on the borders of a neighboring state, and duly authorized under the laws thereof to practice medicine or surgery therein, whose practice extends into the limits of this state:"

The court said in connection with these provisions:

> "It is contended that to except from the provisions of the act the physicians who were practicing medicine in the state prior to the first day of January, 1898, who at the time of the passage of the act were practicing medicine or surgery, and who could prove by affidavit that within one year of said date they had treated at least twelve persons in their professional capacity, is an unreasonable and arbitrary classification, resulting in the exclusion from the exception of physicians

of equal merit and like qualifications with those who are within its terms."

* * * * * * *

"In *Dent* vs. *West Virginia,* 129 U. S. 114, the subject is elaborately considered, and this view affirmed by Mr. Justice Field, speaking for the court. In such statutes there are often found exceptions in favor of those who have practiced their calling for a period of years. In the Dent case, *supra,* an exception was made in favor of practitioners of medicine who had continuously practiced their profession for ten years prior to a date shortly before the enactment of the law. Such exception proceeds upon the theory that those who have acceptably followed the profession in the community for a period of years may be assumed to have the qualifications which others are required to manifest as a result of an examination before a board of medical experts. In the statute under consideration the excepted class were those who had practiced before the first day of January, 1898, being more than four years before the passage of the law, and who could show, presumably with a view to establishing that they were actively practicing at that time, that they had treated at least twelve persons within one year of that date.

"Conceding the power of the legislature to make regulations of this character, and to exempt the experienced and accepted physicians from the requirements of an examination and certificate, the details of such legislation rest primarily within the discretion of the state legislature."

* * * * * * *

"The stress of the argument for the plaintiff in error as to these exceptions is put upon the exemption of resident physicians, or assistant physicians, at hospitals, and students on hospital and dispensary duties. The selection of the exempted classes was within the legislative power, subject only to the restriction that it be not arbitrary or oppressive and apply equally to all persons similarly situated. We can not say that these exceptions nullify the law. The reason for them may be that hospitals are very often the subject of state or municipal regulation and control, and employment in them may be by boards responsible to public authority under state law or municipal ordinance. Certainly the conduct of such institutions may be regulated by such laws or municipal regulations as might not reach the general practitioner of medicine. In any event, we can not say that these exceptions are so wholly arbitrary and have such slight relation to the objects to be attained by the law as to require the courts to strike them down as a denial of the equal protection of the law within the meaning of the federal constitution."

The questions presented in the dissenting opinion already referred, are touched upon in the United States Supreme Court in an opinion rendered recently by Mr. Justice Oliver Wendell Holmes (*Collins* vs. *Texas,* 223 U. S. 288).

In that case just cited an osteopathic doctor was arrested under a statute of the state of Texas for practicing the healing of persons without authority.

The opinion furnished a survey of the statute involved:

> "The statute establishes a board of medical examiners and requires 'all legal practitioners of medicine in this state, who, practicing under the provisions of previous laws, or under diplomas of a reputable and legal college of medicine, have not already received license from a state medical examining board of this state' to prove their diplomas, or existing license, or exemption existing under any law; whereupon they are to receive a verification license (sec. 6). By section 7 applicants not licensed under section 6 must pass an examination, conditioned among other things on their being graduates of 'bona fide reputable medical schools'; schools to be considered reputable 'whose entrance requirements and courses of instruction are as high as those adopted by the better class of medical schools of the United States, whose course of instruction shall embrace not less than four terms of five months each.' By section 9 the examinations are to be fair to every school of medicine, are to be conducted on the scientific branches of medicine only, and are to include anatomy, physiology, chemistry, histology, pathology, bacteriology, physical diagnosis, surgery, obstetrics, gynecology, hygiene and medical jurisprudence. Those who pass are to be granted licenses to practice medicine. By section 10 nothing in the act is to be construed to discriminate against any particular system, and the act is not to apply to dentists legally registered and confining themselves to dentistry, nurses who practice only nursing, masseurs, or

surgeons of the United States Army, Navy, etc., in the performance of their duties."

Following, the court expatiated upon the subject in the following language:

"The facts charged against the plaintiff in error are admitted. It also is admitted that before the passage of the statute he had spent $5,000 in fitting up his place, and was deriving a net income from his calling of at least the same sum. He held a diploma from the chartered American School of Osteopathy, Kirksville, Missouri, after a full two years course of study there, but it does not appear that he presented this diploma to the board of medical examiners or attempted to secure either a verification license or license in any form. The board in passing upon qualifications does not examine in therapeutics or materia medica, which, it will be observed, are not mentioned in the act. *On these facts we are of opinion that the plaintiff in error fails to show that the statute inflicts any wrong upon him contrary to the fourteenth amendment of the Constitution of the United States.* If he has not suffered we are not called upon to speculate upon other cases, or to decide whether the followers of Christian Science or other people might in some event have cause to complain.

"We are far from agreeing with the plaintiff in error that the definition of practicing medicine in section 13 is arbitrary or irrational, but it would be immaterial if it were, as its only object is to explain who fall within the purview of the act. That it does, and of course we follow the Texas court in its decision that the plaintiff

in error is included. It is true that he does not administer drugs, but he practices what at least purports to be the healing art. The state constitutionally may prescribe conditions to such practice considered by it to be necessary or useful to secure competence in those who follow it. We should presume, until the Texas courts say otherwise, that the reference in section 4 to the diploma of a reputable and legal college of medicine, and the confining in section 7 of examinations to graduates of reputable medical schools, use the words medicine and medical with the same broad sense as section 13, and that the diploma of the plaintiff in error would not be rejected merely because it came from a school of osteopathy. In short, the statute says that if you want to do what it calls practicing medicine you must have gone to a reputable school in that kind of practice. Whatever may be the osteopathic dislike of medicines, neither the school nor the plaintiff in error suffers a constitutional wrong if his place of tuition is called a medical school by the act for the purpose of showing that it satisfies the statutory requirements. He can not say that it would not have been regarded as doing so, because he has not tried.

Dent vs. *West Virginia,* 129 U. S. 114, 124.

"An osteopath professes, the plaintiff in error professes, as we understand it, to help certain ailments by scientific manipulation affecting the nerve centers. It is intelligible therefore that the state should require of him a scientific training. *Dent* vs. *West Virginia,* 129 U. S. 114; *Watson* vs. *Maryland,* 218 U. S. 173. He like

others must begin by a diagnosis. It is no answer to say that in many instances the diagnosis is easy—that a man knows it when he has a cold or a toothache. For a general practice science is needed. *An osteopath undertakes to be something more than a nurse or a masseur, and the difference rests precisely in a claim to greater science, which the state requires him to prove.* The same considerations that justify including him justify excluding the lower grades from the law. *Watson* vs. *Maryland,* 218 U. S. 173, 179, 180. Again, it is not an answer to say that the plaintiff in error is prosecuted for a single case. If the legislature may prohibit a general practice for money except on the condition stated, it may attach the same conditions to a single transaction of a kind not likely to occur otherwise than as an instance of a general practice. A distinction between gratuitous and paid services was made in the Maryland statute sustained in *Watson* vs. *Maryland,* 218 U. S. 173, 178. Finally the law is not made invalid as against the plaintiff in error by the fact that he had an established business when the law was passed."

Dent vs. *West Virginia,* 129 U. S. 114;
Reetz vs. *Michigan,* 188 U. S. 505, 510.

It is proper to enact discriminatory legislation, provided the subjects between which is drawn the discrimination are so different as to require different treatment.

The constitution of this state and the constitutions of many states expressly provide that no discrimination may be exercised in the application and

enforcement of laws applicable to both sexes. It is said that each sex shall have an equal opportunity before the law and that no law, therefore, shall be enforced so as to permit one sex to have greater and wider opportunities and advantages than the other. But where ordinances of cities and laws passed by the state legislative bodies declare that women shall not be permitted in saloons and other places where intoxicating liquors are sold, they have been sustained as constitutional upon the theory that the discrimination was based upon a rational and logical distinction between the natural privileges of the sexes, particularly in view of the fact that the mixture of the sexes and the personal contact of members thereof, under influences which attend in places where intoxicating liquors are sold and consumed, are such as to promote and encourage immorality and licentiousness.

The distinction between treating the sick by prayer and treating the sick by other drugless methods is obvious. Where a person manipulates the human frame with the fingers, or by the pressing of his hands, or by other forms of manipulation, it is natural to presume that he should have a thorough knowledge of the human anatomy, and of the bones, muscles, sinews, nerves, arteries and veins of the body, to insure in him an ability and skill sufficient to warrant his undertaking the relieving of ills. Where the method of treatment embraces any system involving physical means, resulting in physical change, a knowledge of the body is necessary to insure the

patient against injury. Healing by prayer or purely mental treatment, would not seem to require any educational advantages, at least an educational training upon the same subjects as required by those who treat by physical means. I can see no reason why a rational distinction does not lie between healing by prayer and healing by other means, such as manipulation of the vertebræ and other portions of the body.

EXEMPTIONS IN FAVOR OF TREATING THE SICK AND AFFLICTED BY SPIRITUAL MEANS HAVE BEEN SUSTAINED AS VALID AND CONSTITUTIONAL IN OTHER STATES.

Board of Medical Examiners vs. *Freenor,* 154 Pac. 941 (Jan. 1916).
People vs. *Gordon,* 194 Ill. 560.
State vs. *Wilcox,* 64 Kan. 789; 68 Pac. 634.

In the case last named the court reviewed a statute of the state of Kansas nearly identical in subject matter with the act reviewed in this instance. In delivering the opinion, the court covered the particular phase:

> "The act is not invalid because it provides that 'nothing in this act shall be construed as interfering with any religious beliefs in the treatment of diseases, providing, that quarantine regulations relating to contagious diseases are not infringed upon' (sec. 6). The express exclusion of the element of religious belief in the application of the law was hardly necessary. Religious freedom is guaranteed by the constitution, and without mention in the statute would have been

implied, and we can see nothing in this provision which makes an illegal discrimination against or in favor of any class of physicians. Neither is there any force in the objection to the provision making the statute inapplicable to the administration of domestic medicines, or to gratuitous services which one friend or neighbor may render to another. It is the practice of medicine and surgery for compensation that is sought to be regulated and controlled, and not the use of home remedies, nor the neighborly offices which one may kindly and gratuitously perform for another."

The contentions of appellant are found on pages 4 and 5 of his opening brief. They are:

1. (*a*) That the acts are unconstitutional because they extend special privileges to those who employ prayer in the treatment of diseases.

(*b*) That they are unconstitutional because they discriminate against those drugless practitioners of every school of drugless healing and in favor of those using prayer only.

(*c*) That they are unconstitutional as discriminating between those who practice healing by mental suggestion, laying on of hands, anointment with oil and kindred treatments and those who use prayer only.

As to the first contention the acts do not grant special privileges to any person or class of persons. *All persons,* whether physicians, drugless practitioners, or Christian Scientists, are permitted to treat

the sick through prayer alone. It is not even required that such plan of treatment be a part of the religion of those using it. The acts merely leave *all* persons free to practice treatment by prayer, and expressly provide that they shall not be construed to "regulate, prohibit or apply to, any kind of treatment by prayer."

There is here no guarantee of special privileges or immunities such as are prohibited by the constitution, because the privilege of treatment by prayer is preserved to all those who desire to avail themselves of it. The fact that some may not believe in prayer, or that it may be more advantageous to them to discourage belief in prayer and encourage treatment by some of the methods for which licenses are required does not affect the constitutional question. Furthermore, the "equal privileges" which are guaranteed to citizens of the state are those only which arise from the federal government and are guaranteed to all citizens of the United States as such.

Duncan vs. *Missouri,* 152 U. S. 382.
United States vs. *Moore,* 129 Fed. 632.
In re Kremler, 136 U. S. 436, 448.

The treatment of the sick does not come within these guaranties.

2. As to appellant's second contention, it is submitted that the constitutionality of an act can not be attacked merely because it prohibits acts by persons of a particular class and does not cover acts of another class. The legislature was concerned merely with the practice of medicine and treatment of the

sick through material means. It is to be presumed that the legislature then deemed that such modes of practice only needed regulation. It was not required to regulate any mode of treatment. In omitting to regulate treatment by prayer it has not rendered unconstitutional the regulations prescribed for those modes of treatment which it deemed required regulation. In this connection the decision of this court concerning the California law relating to hours of labor for women is directly in point. We quote from *Miller* vs. *Wilson,* 236 U. S. 373, at page 383:

> "The contention as to the various omissions which are noted in the objections here urged ignores the well established principle that the legislature is not bound, in order to support the constitutional validity of its regulation, to extend it to all cases which it might possibly reach. Dealing with practical exigencies, the legislature may be guided by experience. *Patsone* vs. *Pennsylvania,* 232 U. S. 138, 144. It is free to recognize degrees of harm, and it may confine its restrictions to those classes of cases where the need is deemed to be clearest. As has been said, it may 'proceed cautiously, step by step,' and 'if an evil is specially experienced in a particular branch of business' it is not necessary that the prohibition 'should be couched in all embracing terms.' *Carroll* vs. *Greenwich Insurance Co.,* 199 U. S. 401, 411. If the law presumably hits the evil where it is most felt, it is not to be overthrown because there are other instances to which it might have been applied. *Keokee Coke Co.* vs. *Tayler,* 234 U. S. 224, 227."

3. The third contention, in so far as appellant is concerned, is covered by his second point. In so far as his objection reaches other modes of treatment such as "mental suggestion" appellant is not the party to raise it. No person practicing any other modes of treatment has objected to the law. In any event, this objection is answered by what is said regarding appellant's second objection.

It is respectfully submitted that the acts complained of are constitutional and should be so held.

Dated September 18, 1916.

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Attorney General of the State of California.
ROBERT M. CLARKE,
Deputy Attorney General.
THOMAS LEE WOOLWINE,
District Attorney of Los Angeles County, California, and
GEORGE E. CRYER,
Assistant District Attorney of Los Angeles County, California.
Solicitors for Appellees.

APPENDIX "A."

Medical practice acts of many states expressly permit the practice of Christian Science *eo nomine* and in others the exemption clause is more broadly worded exempting those who heal by prayer or who heal in the course of a practice of a religion. The respective states where the medical practice acts contain such exemption follow with the provision of the medical practice act of each.

Maine:

"The seven preceding sections shall not apply to * * * persons practicing * * * Christian Science."

Rev. Sts. 1903, Ch. 17, sec. 16; 1895, Ch. 170.

New Hampshire:

"Neither shall the provisions of this act apply to * * * Christian Science, so called, or any method of healing if no drugs are employed or surgical operations are performed."

1897, Ch. 63, sec. 11.

In 1915 the legislature of New Hampshire changed the law so as to read as follows:

"This act shall not be construed so as to interfere in any way with the practice of those who endeavor to prevent or cure diseases or suffering by spiritual means or prayer."

1915, Ch. 167, sec. 17.

Connecticut:

"This chapter shall not apply to * * * any person practicing Christian Science."

Gen. St. 1902, sec. 4714;
1897, Ch. 197, sec. 4714;
1896, Ch. 158, sec. 1.

Kentucky:

"The term practice of medicine as used in this act shall be construed to be the treatment of any human ailment or infirmity by any method * * * but this act shall not apply to the practice of Christian Science."

Ky. Sts. 1915, sec. 2615, Ch. 5;
Acts of 1904, Ch. 34, sec. 5.

Massachusetts:

"The provisions of the eight preceding sections * * * shall not apply to * * * Christian Science."

R. L., Ch. 76, sec. 9.

North Dakota:

"Nothing in this act, however, shall be construed to prohibit the practice of Christian Science or other religious tenets or religious rules or ceremonies as a form of religious worship, devotion or healing, provided that the person administering or making use of or assisting or prescribing such do not prescribe or administer drugs or medicines nor perform surgical or physical operations, nor assume the title of or hold themselves out to be physicians or surgeons."

Comp. L. sec. 463; Acts of 1911, Ch. 189, sec. 6.

South Dakota:

"This act shall not apply * * * to Christian Scientists as such, who do not practice medicine, surgery or obstetrics by any material agency or agencies."

Compiled Laws 1910, p. 72;
1903, Ch. 176, sec. 22.

Tennessee:

"Any person shall be regarded as practicing medicine within the meaning of this act who shall treat or profess to treat, operate on, or prescribe for any physical ailment or physical injury to or deformity of another; providing that nothing in this section shall be construed to apply * * * to Christian Scientists."

1901, Ch. 78, sec. 19.

Territory of Hawaii:

"And further provided, that nothing herein contained shall apply to so-called Christian Scientists so long as they merely practice the religious tenets of their church without pretending a knowledge of medicine or surgery."

Acts of 1909, Par. 124, sec. 1.

Indian Territory:

"And provided further that osteopathy, massage, Christian Science and herbal treatment shall not be affected by this act."

33 U. S. St. at L. (58 Cong.) (1904.) Pt. I, Ch. 1493, sec. 16.

Arizona:

"Nor shall this act be construed so as to discriminate against any particular school of medicine or surgery or osteopathy, or any other system or mode of treating the sick or afflicted, or to

interfere in any way with the practice of religion; providing that nothing herein shall be held to apply to or to regulate any kind of treatment by prayer."

Rev. Sts. 1913, Title 48, sec. 4750;
Acts of 1913, Ch. 17, sec. 18.

California:

"Nor shall this act be construed so as to regulate, prohibit or to apply to, any kind of treatment by prayer, nor to interfere in any way with the practice of religion."

Acts of 1907, Ch. 212, sec. 17;
St. 1913, p. 722.

Colorado:

"Nothing in this act shall be construed to prohibit gratuitous service in case of emergency nor the practice of the religious tenets or general beliefs of any church whatsoever, not prescribing medicine or administering drugs."

Rev. Sts. (1908), sec. 6069;
St. 1905, p. 349.

Florida:

"Mental healers and all persons claiming to heal by absent treatment shall pay a license tax of two hundred dollars each, and in each county; provided, that nothing in this clause shall be construed as affecting the members of any Christian denomination who pray for the recovery of the sick."

Gen. Laws 1913, Ch. 6421 (No. 1), sec. 36.

Georgia:

"Nothing in this act shall be construed * * * to prohibit * * * the practice of the religious tenets or general beliefs of any church whatsoever."

Acts of 1913, No. 229, sec. 15.

Illinois:

"And this act shall not apply to * * * any person who ministers to or treats the sick or suffering by mental or spiritual means, without the use of any drugs or material remedy."

Hurd Rev. Sts. 1909, Ch. 91 (p. 1474);

Laws (1889), p. 275, sec. 7;

See case of *People* vs. *Gordon,* 194 Ill. 560, 570.

Kansas:

"Nothing in this act shall be construed as interfering with any religious beliefs in the treatment of disease; provided, that quarantine regulations relating to contagious diseases are not infringed on."

Gen. Sts. (1909), sec. 8090;

St. 1901, Ch. 254, sec. 6;

Also see case of *State* vs. *Wilcox,* 64 Kan. 789.

Louisiana:

"Nothing in this act however shall be construed to prohibit the practice of the religious tenets of any church whatsoever."

1908, and 241, sec. 3, amending 1894 Act 49.

Michigan:

"This act shall not apply to persons who confine their ministrations to the sick or afflicted to prayer and without the use of material remedies."

Acts of 1913, Ch. 368, sec. 8.

New Jersey:

"The prohibitory provisions contained in this act as amended shall not apply 'to the ministration to, or the treatment of, the sick or suffering by prayer or spiritual means, whether gratuitously or for compensation, and without the use of any drug or material remedy."

Acts of 1915, Ch. 271, sec. 9.

North Carolina:

"Provided that this act shall not apply to any person who ministers to or cures the sick or suffering by prayer to Almighty God, without the use of any drug or material means."

Act of 1905, Ch. 697.

"This act admits Christian Scientists to practice and cure diseases."

State vs. *Biggs,* 133 N. Car. 729.

The exemption above quoted was omitted in the revision of the statutes of North Carolina in 1908, but by the act of 1913, Chapter 292, section 2, the following was inserted:

"The provisions of this section * * * shall not apply to Christian Scientists."

Utah:

"Nor shall anything in this title be construed to apply to those who heal only by spiritual means without pretending to have knowledge of the science of medicine."

"An exception put in the statute to permit treatment by Christian Science."

1907, Ch. 88, sec. 11, p. 99;
Re-enacted 1911, Ch. 93, sec. 1;
Comp. Laws (1907), sec. 1738;
Board vs. *Freenor,* 154 Pac. Rep. 941.

Vermont:

"The provisions of this chapter shall apply to persons professing and attempting to cure disease by means of 'faith cure,' 'mind healing,' or 'laying on of hands'; but shall not apply to persons who merely *practice* the religious tenets of their church without pretending a knowledge of medicine or surgery."

P. S. (1906), sec. 5371;

Amended by 1908, No. 151, sec. 5, p. 138.

Virginia:

"Nothing in this act shall be *construed* to affect * * * the *practice* of the religious tenets of any church in the ministration to the sick or suffering by mental or spiritual means without the use of any drug or material remedy, whether gratuitously or for compensation, provided sanitary laws are complied with."

Acts of 1912, Ch. 237, sec. 11.

Washington:

"Nor shall this chapter be *construed* to discriminate against any particular school of medicine, of surgery, or osteopathy, or any system or mode of treating the sick or afflicted or to interfere in any way with the *practice* of religion; provided, that nothing herein shall be held to apply or to regulate any kind of treatment by prayer."

Laws 1909, Ch. 192, sec. 19.

Wisconsin:

"None of the provisions of this act or the laws of this state regulating the practice of medicine or healing shall be construed to interfere with the practice of Christian Science or with any

person who administers to or treats the sick or suffering by mental or spiritual means, nor shall any person who selects such treatment for the cure of disease be compelled to submit to any form of medical treatment."

Acts of 1915, Ch. 438, sec. 10.

See also the amendment by President Taft to his Executive Order of October 14, 1911, for the Panama Canal Zone, which provides that—

"Nothing in this order shall be *construed* to prohibit the practice of the religious tenets of any church in the ministering to the sick or suffering by mental or spiritual means without the use of any drug or material remedy, whether gratuitously or for compensation, provided sanitary laws are complied with."

APPENDIX "B."

FROM THE NEW TESTAMENT.

The case of Peter's mother sick of a fever, where Jesus "touched her hand" and "healed all that were sick:"

Matt. 8: 14-17; Mark 1: 30-34; Luke 4: 38-40.

"Preaching the gospel of the kingdom, and healing all manner of disease and all manner of sickness among the people."

Matt. 4: 23.

The case of the leper where Jesus "stretched forth his hand and touched him, saying I will; be thou made clean:"

Matt. 8: 3; Mark 1: 41; Luke 5: 13.

The man sick of the palsy: "Arise, and take up thy bed, and go unto thy house:"

Matt. 9: 2-8; Mark 2: 1-12; Luke 5: 17-26.

The case of the woman with an issue of blood who touched his garment: "Thy faith hath made thee whole," and to Jairus' daughter, he took her by the hand: "Talitha cumi; Damsel, I say unto thee, Arise:"

Matt. 9: 18-26; Mark 5: 22-43; Luke 8: 41-56.

The two blind men: "He touched their eyes, saying according to your faith be it done unto you:"

Matt. 9: 27-31.

The man at the pool of Bethesda: "Arise, take up thy bed and walk:"

John 5: 1-16.

The case of the man with the withered hand healed on the Sabbath: "Stretch forth thy

hand. And he stretched it forth; and it was restored whole, as the other:"

Matt. 12: 9-14; Mark 3: 1-6; Luke 6: 6-16.

"He healed them all:"

Matt. 12: 15; Mark 3: 7–10; Luke 6: 17–19.

The case of the Centurion's servant: "Returning to the house found the servant whole:"

Matt. 8: 5–13; Luke 7: 1–10.

The widow's son at Nain, who had died: "Young man, I say unto thee, Arise:"

Luke 7: 11–17.

The conversation with the disciples of John the Baptist:

Matt. 11: 2–5.

"In that hour, he cured many of diseases and plagues and evil spirits; and on many that were blind, he bestowed sight."

Luke 7: 18–23.

"He laid his hands upon a few sick folk and healed them."

Mark 6: 5–6.

"Healing all manner of disease and all manner of sickness."

Matt. 9: 35–36.

Before the miracle of the loaves and fishes, "he had compassion on them and healed their sick."

Matt. 14: 13–14; Luke 9: 11; John 6: 2, 3.

See the message to Herod:

"Go and say to that fox, Behold, I cast out devils and perform cures today and tomorrow, and the third day I am perfected."

Luke 13: 32.

After the miracle of the loaves and fishes:

"As many as touched him were made whole:"

Matt. 14: 36; Mark 6: 56.

The case of the deaf man at Decapolis and the healing of many:

Mark 7: 31–37; Matt. 15: 30–31.

The blind man of Bethsaida:

Mark 8: 22–26.

The epileptic boy whom the disciples could not heal: "And he said unto them, this kind can come out by nothing, save by prayer:"

Mark 9: 29; Matt. 17: 14–20; Luke 9: 38–43.

The "man blind from his birth:"

John 9: 1–21.

The woman with the "spirit of infirmity" healed on the Sabbath:

Luke 13: 11, 12.

The man with the dropsy (also on the Sabbath): "And he took him and healed him and let him go:"

Luke 14: 1–5.

The raising of Lazarus:

John 11: 1–46.

The healing of the ten lepers:

Luke 17: 11–19.

The case of blind Bartimeus: "Go thy way: thy faith hath made thee whole:"

Mark 10: 46–52; Matt. 20: 29–34; Luke 18: 35–43.

The healing of the blind and the lame in the temple:

Matt. 21: 14.

Unclean Spirits.

There are numerous instances through the new testament of the casting out of unclean spirits.

The Demoniac in the synagogue at Capernaum where Jesus gave the command: "Hold thy peace and come out of him:"

Mark 1: 21–28; Luke 4: 31–37.

Fulfilling Isaiah: "Himself took our infirmities and bare our diseases." "He cast out the spirits with a word and healed all that were sick."

Matt. 8: 14–17; Mark 1: 29–34; Luke 4: 38–41.

Speaks of those "possessed with devils," "epileptic" and "palsied," "and he healed them," "preaching and casting out devils:"

Matt. 4: 24; Mark 1: 39.

"Dumb man possessed with a devil."

Matt. 9: 32–33.

A similar case "blind and dumb"; where the "dumb man saw and spake:"

Matt. 12: 22, 23.

The case of the Gadarene Demoniacs who were sent into the swine:

Matt. 8: 28–34; Mark 5: 1–20; Luke 8: 26–39.

The Syrophoenician woman's daughter: "and her daughter was healed from that hour:"

Matt. 15: 21–28; Mark 7: 24–30.

The complaint of the disciples "that they saw one casting out devils:"

Mark 9: 38–40; Luke 9: 49–50.

The "devil that was dumb:"

Luke 11: 14–21.

FROM THE OLD TESTAMENT.

Exod. 15: 26. "For I am the Lord that healeth thee."

2 Kings, 20: 5. "Thus saith the Lord, the God of David thy father, I have heard thy prayer, I have seen thy tears; behold, I will heal thee."

2 Chron. 30: 20. "The Lord hearkened to Hezekiah and healed the people."

Ps. 107: 20. "He sent his word and healed them."

Is. 6: 10. "and understand with their heart and convert and be healed."

Is. 57: 19. "Saith the Lord: and I will heal him."

Jer. 30: 17. "I will heal thee of thy wounds, saith the Lord."

See also:

"to another the gifts of healing by the same spirit."

1 Cor. 12: 9; cf. 12: 28; 12: 30.

APPENDIX "C."

Tenets of the Mother Church, the First Church of Christ, Scientist.

To be signed by those uniting with the First Church of Christ, Scientist, in Boston, Massachusetts.

1. As adherents of Truth, we take the inspired Word of the Bible as our sufficient guide to eternal Life.

2. We acknowledge and adore one supreme and infinite God. We acknowledge His Son, one Christ; the Holy Ghost or divine Comforter; and man in God's image and likeness.

3. We acknowledge God's forgiveness of sin in the destruction of sin and the spiritual understanding that casts out evil as unreal. But the belief in sin is punished so long as the belief lasts.

4. We acknowledge Jesus' atonement as the evidence of divine, efficacious Love, unfolding man's unity with God through Christ Jesus the Wayshower and we acknowledge that man is saved through Christ, through Truth, Life, and Love as demonstrated by the Galilean Prophet in healing the sick and overcoming sin and death.

5. We acknowledge that the crucifixion of Jesus and his resurrection served to uplift faith to understand eternal Life, even the allness of Soul, Spirit, and the nothingness of matter.

6. And we solemnly promise to watch, and pray for that Mind to be in us which was also in Christ Jesus; to do unto others as we would have them do unto us; and to be merciful, just, and pure.

MARY BAKER EDDY.

Page 15 of "Church Manual of The First Church of Christ, Scientist," in Boston, Massachusetts.

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